

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

.....
BOSTON AND MAINE CORPORATION,

Plaintiff,

v.

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,

Defendant.
.....

CIVIL ACTION No. 05-11656-RCL

**DEFENDANT MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY'S MOTION FOR PARTIAL SUMMARY JUDGMENT
ON THE ISSUE OF DISCHARGE IN BANKRUPTCY**

Defendant Massachusetts Bay Transportation Authority ("MBTA") hereby moves for partial summary judgment pursuant to F.R.C.P. 56 and Local Rule 56.1. By its motion, the MBTA seeks partial summary judgment dismissing Counts I, II and III of Plaintiff Boston and Maine Corporation's ("B&M") Complaint for Enforcement of Bankruptcy Consummation Order, Injunctive Relief and Contempt. In these Counts, the B&M seeks a declaration that, to the extent they arise from events occurring on or before June 30, 1983, the MBTA's claims against the B&M under the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. ch. 21E are barred by the B&M's discharge in bankruptcy. As more particularly set forth in the memorandum filed herewith, the Court should grant the motion because the undisputed material facts establish that those claims were not in the fair contemplation of the parties on or before June 30, 1983, the effective date of the Consummation Order issued in the B&M's bankruptcy proceeding. Therefore, the MBTA's claims were not discharged, and the counts of B&M's complaint relating to the bankruptcy discharge issue should be dismissed.

REQUEST FOR ORAL ARGUMENT

Defendants believe that oral argument would assist the Court in resolving the issues raised in this Motion. Accordingly, in accordance with Local Rule 7.1(D), they request a hearing at such time as the Court determines is appropriate.

By its attorneys,

/s/ John M. Stevens
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Dated: June 2, 2006

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(A)(2)

I, Alicia Barton McDevitt, hereby certify that on May 25, 2006, I conferred with Susan A. MacIntyre, counsel for Boston and Maine Corporation, regarding this Motion pursuant to Local Rule 7.1(A)(2), and was unable to narrow the issues presented in this Motion.

/s/ Alicia Barton McDevitt
Alicia Barton McDevitt (BBO #655184)